

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SIMON MOSHEL,

Petitioner,

-v-

CRAIG APKER,

Respondent.

06 cv 00801 (GBD)(KNF)

ORDER

GEORGE B. DANIELS, District Judge:

Pro se petitioner was sentenced to twenty months imprisonment and three years of supervised release on June 1, 2005, in the United States District Court for the Eastern District of New York, following his conviction for conspiracy to traffic in counterfeit goods. In February 2006, petitioner filed a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging a Federal Bureau of Prisons (“BOP”) February 2005 rule that limited the placement of federal prisoners in community corrections centers (“CCC”). He requested that the court direct BOP to consider him for CCC placement prior to the time prescribed by the February 2005 Rule. The Court referred this matter to Magistrate Judge Kevin Nathaniel Fox for a Report and Recommendation. Magistrate Judge Fox issued a Report and Recommendation (“Report”) in which he found petitioner’s claim to be without merit and in any event moot. He recommended that the petition be denied in its entirety.


The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. Where there are no objections, the Court may accept the Report provided there is no clear error on the face of the record. See Nelson v. Smoth, 618 F.Supp. 1186, 1189 (S.D.N.Y. 1985); see also Heisler v. Kralik, 981 F.Supp. 830, 840 (S.D.N.Y. 1997), aff’d, 167 F.3d 618 (2d Cir. 1998). In his report, Magistrate Judge Fox advised the parties that failure to file timely objections to the Report would constitute a waiver of those

objections. Neither petitioner nor respondent filed objections to the Report and the time to do so has expired. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). After reviewing the Report, the Court finds that the record is not facially erroneous. The petition is denied because BOP policy has changed in response to the Second Circuit's decision in Levine v. Apker, 455 F.3d 71, 87 (2d Cir. 2006), and petitioner in this case has since been released from prison and is serving a three-year term of supervised release.

Petitioner has not made a substantial showing of the denial of a constitutional right. Therefore, a certificate of appealability will not issue. 28 U.S.C. § 2253; Tankleff v. Senkowski, 135 F.3d 235, 241 (2d Cir. 1998); United States v. Perez, 129 F.3d 255, 259-260 (2d Cir. 1997); Lozada v. United States, 107 F.3d 1011 (2d Cir. 1997). Additionally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. Coppedge v. United States, 369 U.S. 438 (1962).

Dated: ^{OCT 19 2007} October __, 2007
New York, New York

SO ORDERED:



GEORGE B. DANIELS
United States District Judge